

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**AMAZON.COM, INC and AMAZON  
DATA SERVICES, INC.,**

Plaintiffs,

v.

**WDC HOLDINGS LLC d/b/a  
NORTHSTAR COMMERCIA  
PARTNERS, et al.,**

Defendants,

**Case No. 1:20cv484**

**Hon. Rossie D. Alston, Jr.  
Hon. Theresa Buchanan**

**800 HOYT LLC,**

Intervening Interpleader Plaintiff,

v.

**BRIAN WATSON, WDC HOLDING  
LLC, PLW CAPITAL I,  
LLC.AMAZON.COM, INC, and  
AMAZON DATA SERVICES, INC.**

Interpleader Defendants.

**DECLARATION OF ADAM R. SMART  
IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PROTECTIVE ORDER  
REGARDING THE TESTIMONY OF  
DENNIS WALLACE**

I, Adam R. Smart, pursuant to 28 U.S.C. § 1746 hereby declare, under penalty of perjury, as follows:

1. I am over the age of 18 years. I have personal knowledge of the facts set forth below, and if called upon to do so, I could and would competently testify thereto.

2. I am an attorney licensed to practice law in the State of Florida and admitted to appear in this case, *pro hac vice*, on behalf of Defendants Carleton Nelson and Cheshire Ventures, LLC. I am an attorney at the law firm of Burr & Forman, LLP.

3. I make this declaration in support of Defendant Carleton Nelson's opposition to Plaintiffs' motion seeking a protective order precluding the deposition of Dennis Wallace.

4. Attached hereto as **Exhibit A** is a true and correct copy of correspondence, dated February 23, 2022, between Alex Little, counsel for Carleton Nelson and Cheshire Ventures, and counsel for Plaintiffs concerning various depositions noticed by Carleton Nelson and Cheshire Ventures.

6. Attached as **Exhibit B** is a true and correct copy of an email chain between me and counsel for Plaintiffs concerning knowledge about the topics at issue in this opposition, occurring on March 4, 2022.

7. Attached as **Exhibit C** is a true and correct copy of a presentation dated June 10, 2020, produced by Plaintiffs during discovery in this action (filed under seal).

8. Attached as **Exhibit D** is a true and correct copy of an Amendment to lease agreement, produced by Plaintiff during discovery in this action, signed by Dennis Wallace (filed under seal).

9. Attached as **Exhibit E** is a true and correct copy of an Amended and Restated lease agreement, produced by Plaintiff during discovery in this action, signed by Dennis Wallace (filed under seal).

10. Attached as **Exhibit F** is a true and correct copy of a document entitled "Confidential Settlement Agreement," without attachments, produced by Plaintiff during discovery in this action, signed by, among others, Dennis Wallace (filed under seal).

11. Attached as **Exhibit G** is a true and correct copy of an H&M Property Proffer Statement, October 6, 2020 Revision, with the notarized signature of Dennis Wallace (filed under seal).

12. Attached as **Exhibit H** is a true and correct copy of an email chain between me and counsel for Plaintiffs concerning the production of the most recent lease modifications, occurring between January 7 and January 10, 2022 (filed under seal).

13. Attached as **Exhibit I** is an excerpt from Nelson and Cheshire Ventures' initial disclosures under Fed. R. Civ. P. 26(a)(1), dated December 3, 2021.

14. Attached as **Exhibit J** is Plaintiffs' initial disclosures under Fed. R. Civ. P. 26(a)(1), dated December 3, 2021.

15. Attached as **Exhibit K** is an excerpt from Plaintiffs' objections to Nelson's first set of interrogatories dated March 3, 2022.

16. Attached as **Exhibit L** is an excerpt from Plaintiffs' objections to Nelson's second requests for production.

17. Upon a review of the documents produced to Nelson by Amazon, it does not appear that Amazon has produced any substantive correspondence concerning the most recent amendment to the lease agreements or the "settlement agreement" between Amazon and IPI.

18. Upon a review of the documents produced to Nelson by Amazon, it does not appear that Amazon has produced any internal analysis or approval of the most recent amendment to the lease agreements or the "settlement agreement" between Amazon and IPI.

19. On a February 22, 2022, call with counsel from Gibson Dunn, counsel objected to Wallace's deposition. The basis for that objection was that, as in-house counsel for AWS, his testimony would all consist of legal advice in his role as in-house counsel and thus purportedly be privileged. On that same call, I and Alex Little explained that Nelson had no intention of inquiring into legal advice Wallace gave in his role as in-house counsel but rather wished to inquire about communications, negotiations, and documents shared with third parties, such as the presentation

he made to the government during a June 10, 2020 meeting with the U.S. Attorney's Office for the Eastern District of Virginia as part of the information Amazon shared during the course of numerous meetings and conference calls with the government; and the negotiations and communications concerning the various amendments to the lease agreements the company entered with IPI (who was Amazon's landlord) for each of the nine lease transactions at issue in the Complaint (and which Mr. Wallace signed as Vice President of Amazon Data Services, Inc. ("ADS")), as well as the related settlement agreement with IPI, all of which Amazon has identified as part of the basis for their alleged damages and subsequent mitigation efforts in its Fed. R. 26(a)(1)(A)(iii) disclosures.

20. During the February 22, 2022 call, counsel for Nelson asked if there was someone else at Amazon who was not an attorney, and who Amazon believed had the information Wallace possessed about the negotiations of the settlement agreement and the revised leases with the IPI. However, Amazon's counsel did not identify anyone on the call in response to this inquiry or at any other time prior to filing its motion.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief

Executed on March 4, 2022

/s/ Adam R. Smart  
ADAM R. SMART

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2022, a true and correct copy of the foregoing has been served upon the following via email:

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/s/ Rachel Friedman  
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